IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

M/s. Jodhpur Sahkari Upbhokata Wholesale Bhandar Ltd.Jodhpur.
vs. State of Rajasthan & Ors.
(S.B.C.Writ Petition No.485/02)

Dated:- 14th July, 2006

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

REPORTABLE

Mr.Rajesh Joshi, for the petitioner.
Mr.N.K.Vyas, for the respondent.

This writ petition has been filed by M/s Jodhpur Sahkari Upbhokta Wholesale Bhandar Limited,Jodhpur challenging the order dated 22.10.96 passed by the Labour Court,Jodhpur. By this award the Labour Court answered to the reference on an industrial dispute made to it by appropriate Government vide order dated 28th May, 1997. Reference made was whether termination of the respondent no. 2 from service of the petitioner on 15.6.1987 was legal and justified and if not, what relief the workman was entitled to. The case of the respondent-workman before the learned Labour Court was that he was initially appointed with the respondents on 26.10.1967 and continued to work with them till 15th June, 1987. He had completed 240 days in a calender year immediately preceding the date of removal. A reference on the same subject matter was earlier made through Union as Labour Case No.88/89 which was decided by the Labour Court vide award dated 22.9.1993 but the respondent no.2 could not file his statement of claim therein because the

Union did not inform him about the same. Earlier, the petitioner-Society went its liquidation on 18.5.1987 but it has now been revived on 6th September, 1988 .The Society has again started functioning from May, 1989.

When notice of the learned Labour Court was served on the petitioner-Society to appear on 13.8.1997, none appeared on their behalf and the case was then adjourned to 20.9.1997. On 20.9.1997 again the case was adjourned to 15.10.97 due to non-appearance. On 15.10.97 again none appeared on behalf of the respondent and the matter was then adjourned to 3.11.1997 on which date also the matter remained unattended from the side of Management and therefore, the proceedings were started ex-parte against them. The petitioner Society therefore did not contest the claim of the workman. Neither did it file reply to the statement of claim nor did it file any affidavit in rebuttal of the affidavits filed by the workman. In the circumstances therefore, assertion of the workman that he had completed 240 days in a calender year immediately preceding the date from his removal was taken to be proved. The reference was answered to the effect that removal of the workman by the Society from service w.e.f. 15.6.1987 was illegal, unjustified and he was entitled to re-instatement in service with full back wages for the period from the date of his removal i.e. 15.6.1987 to the date of re-instatement. It was also directed that the Society shall pay to the workman Rs.2000/- as cost of litigation.

Learned counsel for the petitioner has assailed the award

passed by learned Labour Court on various grounds. He has argued that removal of the respondent-workman was made way back on 15.6.1987 and therefore, the reference made by the appropriate Government belatedly on 28th May, 1997 was itself incompetent. He has argued that earlier also a reference was made on the same subject matter at the instance of the Union in Labour Case No.88/89 before the Labour Court. The petitioner was also member of the said Union but he did not choose to file the statement of claim. In these circumstances, the second reference on the same subject matter was not maintainable. He has further argued that the petitioner had moved an application before the Labour Court with the request that the impugned ex-parte award dated 22.10.1999 should be set aside. In the application, it was stated that it is not clear as to who on behalf of the petitioner-Society in their office has received notice on 5.7.1997. Neither name of such officer nor his designation has been recorded. In the circumstances, the service of the notice on the petitioner-Society cannot be accepted as proper. It was only when the copy of the award dated 22.10.1999 was served on them on 11.11.1999 by the workman that petitioner came to know about the award, The petitioner immediately contacted their Legal Adviser and moved application for setting aside ex-parte award. It was submitted that even if the Court come to the conclusion that the notice was duly served on the Society, argument of the petitioner would be that the same was mis-placed somewhere as there was no entry in the Entry Register. Learned counsel for petitioner has further argued that since the dispute in the present case raised by the respondent was unnecessarily delayed and reference was made with inordinate delay, the learned Labour Court

ought not to have granted the benefit of full back wages to him. It was thus prayed that in the interest of justice, the ex-parte award passed by Labour Court should be set aside and the petitioner should be afforded an opportunity to participate in the proceedings.

On the other hand, learned counsel for the respondents has argued that the notice of the reference was duly served upon the petitioner-Society and they cannot take advantage of their own lapse at this belated stage. It has been argued that most of the employees who were earlier removed along with the petitioner on 15.6.1987 are re-instated in service . The actual reason for their removal from service was that the petitioner-Society went into liquidation but subsequently the liquidation order was withdrawn and it was revived. Therefore, the petitioner is also entitled to be re-instated in service. As regards the earlier reference, it was submitted that although such reference was made but the Union which was prosecuting the reference did not inform the respondent-workman about the pendency of the same. In these circumstances, he could not file his statement of claim. It was argued that the award cannot be set aside because the reference was made belatedly particularly when the delay was partly attributed to the Conciliation Officer and partly to the appropriate Government.

I have given my thoughtful consideration to the arguments advanced by both the parties and perused the record.

At the outset, it may be noted that the petitioner-Society

neither in the writ petition nor even in the application filed before learned Labour Court for setting aside ex-parte award disputed the factual position that the respondent-workman has completed 240 days in service of the Society. They have also not disputed the position that the respondent-workman was removed with other persons and that the respondent-workman was working with them since 26.10.1987, which is the date of initial appointment of the respondent no.2 duly recorded in the impugned award. They have not furnished any details even before this Court as to if they have made compliance of Section 25 F of the Industrial Disputes Act. In the circumstances, I do not deem it appropriate to interfere with the award passed by learned Labour Court to the extent of finding where it held retrenchment of the respondent-workman illegal as being violative of Section 25 F of the Industrial Disputes Act and directed his reinstatement.

Learned counsel for the petitioner has placed reliance on a recent judgment of the Hon'ble Supreme Court in the case of U.P. State Brassware Corporation Ltd. & Anr. vs. Uday Narain Pandey, reported in 2006 (1) SCC 479. The Hon'ble Supreme Court in this case was dealing with the argument that payment of back wages was an automatic consequence when an order of termination is held unsustainable. The Hon'ble Supreme Court in para 22 of the said judgment observed as under:-

> “22.No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and

> circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act."

While dealing with the same issue in the case of General Manager, Haryana Roadways vs. Rudhan Singh, reported in (2005) 5 SCC p.591, the Hon'ble Supreme Court in para 7 observed as under :-

> "7.In our opinion certain factors, which are relevant for forming an opinion regarding award of back wages, have been completely ignored and, therefore, the award on this point is vitiated. The list of dates given in the special leave petition, which have not been controverted, show that though according to the own case of the respondent his services had been terminated on 28.2.1989, yet he served a demand notice praying for reinstatement in service after two-and-a-half years on 24.8.1991. The State Government made reference to the Industrial Tribunal-cum-Labour Court in the year 1997, which means eight years after the termination of service. Normally, a reference should not be made after lapse of a long period. A labour dispute should be resolved expeditiously and there is no justification for the State Government to sleep over the matter and make a reference after a long period of time at its sweet will. It causes prejudice both to the workman and also to the employer. It is not possible for an employer to retain all the documents for a long period and then to produce evidence, whether oral or documentary, after years, as the officers, who may have dealt with the matter, might have left the establishment on account of superannuation or any other reason. The employer is not at fault if the reference is not made expeditiously by the State Government, but it is saddled with an award directing payment of back wages without having taken any work from the workman concerned. The plight of the workman who is thrown out of employment is equally bad as it is a question of survival for his family and he should not be left in a state of uncertainty for a long period."

I have examined the present matter in the light of the law

enunciated by the Hon'ble Supreme Court as cited supra. In the present case, a reference was earlier made at the instance of the Union way back in the year 1989 but the respondent-workman did not file any statement of claim therein and in these circumstances, the award was passed by the Labour Court on 22.9.1993 in respect of other workmen only. Reference in this case has been made as delayed as 28th May, 1997 whereas the respondent-workman was removed from service almost a decade before. Back wages will not follow automatically as a matter of course in every case where removal/retrenchment is held illegal by the Labour Court. It would always depend upon the facts and circumstances of each case. The management faces difficulty in producing the relevant evidence to justify the removal after belated stage on account of loss of documents and non-availability of relevant witnesses. In the present case, it cannot be held that the petitioner Society was in any manner responsible for the delay in making of reference. On the other hand, fault on the part of the petitioner is writ large from evidence available on record. When the industrial dispute was referred in the year 1989 by the Union of which the respondent-workman was member, he did not file any statement of claim and remained silent. Obviously, the Labour Court while passing the award dated 22.9.1993 had to confine itself to answer the reference in regard to other workmen only. In the reply to the writ petition, the respondent-workman has not given any explanation whatsoever as to why he initiated the action of making another reference so late. Notwithstanding the fact that the award was passed ex-parte against the petitioner-Society, the respondent-workman cannot be rewarded for inaction on his part. At the same time, however no interference is called for in the award passed by

the learned Labour Court in so far as it has directed the services of the respondent-workman will be deemed to be continued more particularly, when the award was passed in regard to the other workmen who were also removed from service by same order dated 15th June, 1987.

Upshot of the aforesaid discussion is that the present petition is partly allowed. While the direction given by the learned Lower Court,Jodhpur for re-instatement of the respondent-workman and continuity in service is upheld, the direction granting full back wages to the respondent-workman is set aside. It is however clarified that the respondent-workman shall be entitled to the notional benefits of pay and increments etc. for the intervening period of the date of removal till the date of his re-instatement.

With the aforesaid modifications, the writ petition is partly allowed. No order as to costs.

(MOHAMMAD RAFIQ),J.